

## **REMARKS**

The Applicant has received and reviewed the Official Action mailed by the Office on April 1, 2008 (the "Office Action"). Applicant graciously appreciates the Office's attention to the instant application and submits this paper as a fully-responsive reply to the Office Action. Applicant requests favorable consideration of this response and pending claims 1-15 and new claim 25 at the earliest convenience of the Office.

### **Rejection of Claims 1-15 under 35 USC §103(a)**

Claims 1-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No. 6,665,729 to Walker ("Walker") in view of US Pub. No. 20040001514 A1 to Wookey et al. ("Wookey"). The Applicant respectfully traverses this rejection. However, in the interests of advancing prosecution of this matter, and without conceding the propriety of the stated rejection, the Applicant has amended claims 1 and 11, and added new independent claim 25, for clarification. Support for the amendments may be found in the specification at least at paragraphs [0032] and [0053]-[0058].

### **Applicable Legal Standard for Establishing a *Prima Facie* Case of Obviousness**

In *KSR Intn'l Co. v. Teleflex, Inc. (KSR)*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007), the U.S. Supreme Court reiterated that the appropriate framework for

conducting the objective analysis required to make a determination of obviousness under 35 U.S.C. § 103 is provided in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. (MPEP 2141 II.) As specified in *Graham*, a proper obviousness analysis is based on factual inquiries, which, in part, require that: 1) the scope and content of the prior art are to be determined; 2) differences between the prior art and the claims at issue are to be ascertained; and 3) the level of ordinary skill in the pertinent art is to be resolved. (*Id.* (citing *Graham*, at 17-18, 148 USPQ at 467)).

**With regard to claims 1-10 and 25:**

Claim 1 recites:

A computer-implemented process comprising:  
determining a size of a data structure;  
when the size exceeds a predetermined limit, selecting a data streaming protocol and sending data of the data structure consistent with the streaming protocol; and  
when the size does not exceed the predetermined limit selecting a buffered data protocol and, when a predetermined time interval has elapsed, sending data of the data structure consistent with the buffered protocol.

Claim 25 recites:

A computer-implemented process comprising:  
determining a size of a data structure;  
when the size exceeds a first predetermined limit, selecting a data streaming protocol and sending data of the data structure consistent with the streaming protocol; and  
when the size does not exceed the first predetermined limit selecting a buffered data protocol and sending data of the data

structure consistent with the buffered protocol when the data structure reaches a second predetermined size limit and system resources are available.

As discussed in the previous response, Walker is directed to a modified stream-based protocol implementation to compensate for inefficiencies associated with conventional stream based protocols. (Walker, Abstract). The implementation disclosed in Walker compensates for limitations that arise when a transaction-based protocol is used together with stream-based protocol, the stream-based protocol is *modified* to take advantage of certain characteristics of transaction-based protocols. (Walker, Col. 2 lines 50-55).

While the Walker reference describes modifying a stream-based protocol to take advantage of the desirable characteristics of transaction-based protocol, Claim 1, in contrast, recites a computer-implemented process comprising “determining a size of a data structure; **when the size exceeds a predetermined limit, selecting a data streaming protocol** and sending data of the data structure consistent with the streaming protocol; and **when the size does not exceed the predetermined limit selecting a buffered data protocol** and, **when a predetermined time interval has elapsed**, sending data of the data structure consistent with the buffered protocol.”

Walker instead describes, with reference to the flow diagram in Fig. 4, employing a modified TCP/IP protocol stack at the client which utilizes characteristics of the transaction-based protocol to provide more efficient network operation. (Walker, Fig. 4). This modified TCP/IP stack is able to reduce system

delays while increasing network efficiency. The subject matter of claim 1 on the other hand recites sending data of the data structure consistent with the selected protocol. The subject matter of Claim 1 does not use a modification of protocol as described in Walker, which uses a **modified stream-based protocol** (transaction-protocol employing characteristics of stream-based protocol) when transaction-based protocol is selected. Instead claim 1 selects and uses a **buffered protocol** or a **streaming protocol** for sending data, the protocol selection based on the size of the data structure.

The Office admits that Walker fails to teach the claimed feature of selecting a data streaming protocol when the size exceeds a predetermined limit (examiner interpreting data stream protocol as bulk data protocol) (Office Action, Pg 3, paragraph 4). The examiner therefore turns to Wookey as teaching this feature. However, the cited portion in Wookey describes that a short message can contain monitoring data, such as events or alarms, a response to a message sent in the other direction, bulk data transfer request or response infrastructure control message or other data. (Wookey, [0296-0297]).

Wookey describes a remote services system that exchanges information which is either a short message type or a bulk data type. Here, bulk data type is the type of information whose size is greater than a stipulated limit. Bulk data type is not a protocol but is a classification of information to be exchanged between multiple components of the remote services system. Further, the bulk data transfer request is described as an example of the monitoring data that can be

contained in a short message, but does not disclose selecting a data streaming protocol when size exceeds a “*a predetermined limit*”, nor does it describe the transmission of a buffered message “*when a predetermined time interval has elapsed.*”

Accordingly, neither Wookey nor Walker teach or suggest all of the elements of independent claim 1. Applicant therefore requests reconsideration and withdrawal of the rejection.

With regard to newly added independent claim 25, neither Wookey nor Walker teach suggest “*a first predetermined limit*” or “*a second predetermined size limit*” for data structure size, nor do they teach “*sending data of the data structure consistent with the buffered protocol when the data structure reaches a second predetermined size limit and system resources are available.*”

**Dependent claims 2-10** depend from independent claim 1 and are allowable by virtue of this dependency, as well as for additional features that each recites.

**With regard to claims 11-15:**

Claim 11 recites:

A computing system for handling messages comprising:

means for processing data from memory;

means for determining a size of a data structure;

means for selecting a data streaming protocol when the size exceeds a predetermined limit and means for sending a data structure using a data streaming protocol; and

means for selecting a buffered data protocol when the size does not exceed a predetermined limit and means for sending a data

structure using a buffered data protocol when a predetermined time interval has elapsed.

As mentioned above, Walker describes that determination of the protocol to be employed (stream-based/transaction-based) is made upon the basis of application layer of the client. (Walker, Col 5 lines 17-20). Walker fails to teach selecting a data streaming protocol when the size exceeds a predetermined limit; selecting a buffered data protocol when the data structure does not exceed a predetermined size limit and sending the data structure using a buffered protocol when a predetermined size interval has elapsed. Wookey fails to remedy the deficiencies of Walker because Wookey does not disclose selecting a data streaming protocol when size exceeds “*a predetermined limit.*” Additionally, with respect to claim 11, Wookey does not describe the transmission of a buffered message “*when a predetermined time interval has elapsed.*”

Accordingly, neither Wookey nor Walker teach or suggest all elements of independent claim 11. Applicant therefore requests reconsideration and withdrawal of the rejection.

**Dependent claims 11-15** depend from independent claim 11 and are allowable by virtue of this dependency, as well as for additional features that each recites.

### CONCLUSION

For at least the foregoing reasons, claims 1-15 and 25 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections and an early notice of allowance.

If any issue remains unresolved that would prevent allowance of this case,  
**Applicant requests that the Examiner contact the undersigned attorney to resolve the issue.**

Respectfully submitted,

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